

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 266 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SABBIRBHAI S DHANALIWLA THROU P/OF ATTORNEY SG DARBAR

Versus

IBRAHIM C BHATHIARA

Appearance:

MR RN SHAH for Petitioner
MR PM RAVAL for Respondent No. 1
NOTICE SERVED for Respondent No. 3, 4, 5

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/09/2000

ORAL JUDGEMENT

Shri R.N. Shah, learned counsel for the
revisionist has been heard and the material on record
has been examined.

2 Brief facts giving rise to this revision are that in Regular Civil Suit No.8 of 1976 the three plaintiffs prayed for setting aside the decree passed in Regular Civil Suit No.187 of 1972 and also prayed for permanent injunction restraining the defendants from executing the decree and proceeding with Execution Case No.27 of 1975. The case of the plaintiffs was that their father Chandbhai Hasubhai was originally the tenant of three shops nos.79, 79/1 and 79/2. The attorney of the defendants nos.1 and 2 filed Regular Civil Suit No.187/1972 against Noorbai, after the death of the father of the plaintiffs. The plaintiffs averred that they had been residing with their parents and they are the heirs of Chandbhai Hasubhai and they were also necessary parties. They further averred that they are also tenants in the suit premises and therefore the decree passed in Regular Civil Suit No.187 of 1972 is null and void.

3 During the pendency of the suit the property was purchased by the defendant no.3 hence on his application he was impleaded as a party.

4 Defendants nos.1 and 2 resisted the suit on the ground that the suit premises was let out to Noorbai and she was the legal tenant and therefore Regular Civil Suit No.187 of 1972 was properly filed only against her. It was also pleaded that the suit is barred by estoppel. It was further pleaded that with a view to delay the execution of the decree that the suit was filed.

5 Defendant no.3 also filed written statement pleading that originally the suit premises was let out to Chandbhai Hasubhai for business purposes and after his death, his wife Noorbai was carrying on the business in the suit premises and she was the only heir of Chandbhai and as such decree in Regular Civil Suit No.187 of 1972 is legal and is binding upon the plaintiffs.

6 After considering the replies and contentions of the parties, the trial Court decreed the suit and declared that the decree passed in Regular Civil Suit No.187 of 1972 is not binding upon the plaintiffs. The said decree was set aside and the defendants were restrained from obtaining the possession of the suit premises from the plaintiffs on the strength of that decree.

7 An appeal was preferred which was also dismissed.

8 Having examined the two judgements, I do not find that the judgements rendered by the two Courts below are perverse or illegal. On the material on record there exists no justification for interference in the order of the two courts below. The revision is therefore devoid of substance and is bound to fail. The revision is accordingly dismissed with no order as to costs.

(mohd)